

## **Commission on Health and Safety and Workers' Compensation**

### **MINUTES OF MEETING December 8, 2006 Elihu M. Harris State Building Oakland, California**

#### In Attendance

Chair Angie Wei

Commissioners Alfonso Salazar, Kristen Schwenkmeyer, Robert B. Steinberg, Darrel "Shorty" Thacker and John Wilson

Executive Officer Christine Baker

#### Not in Attendance

Commissioners Allen Davenport and Leonard C. McLeod

#### **Call to Order / Minutes of Previous Meeting**

Angie Wei, 2006 CHSWC Chair, called the meeting to order at 9 a.m.

#### *CHSWC Vote*

Commissioner Wilson moved to approve the Minutes of the October 5, 2006 meeting, and Commissioner Thacker seconded. The motion passed unanimously.

#### **Presentation on Monitoring Cost in the Workers' Compensation System Soeren Mattke, RAND**

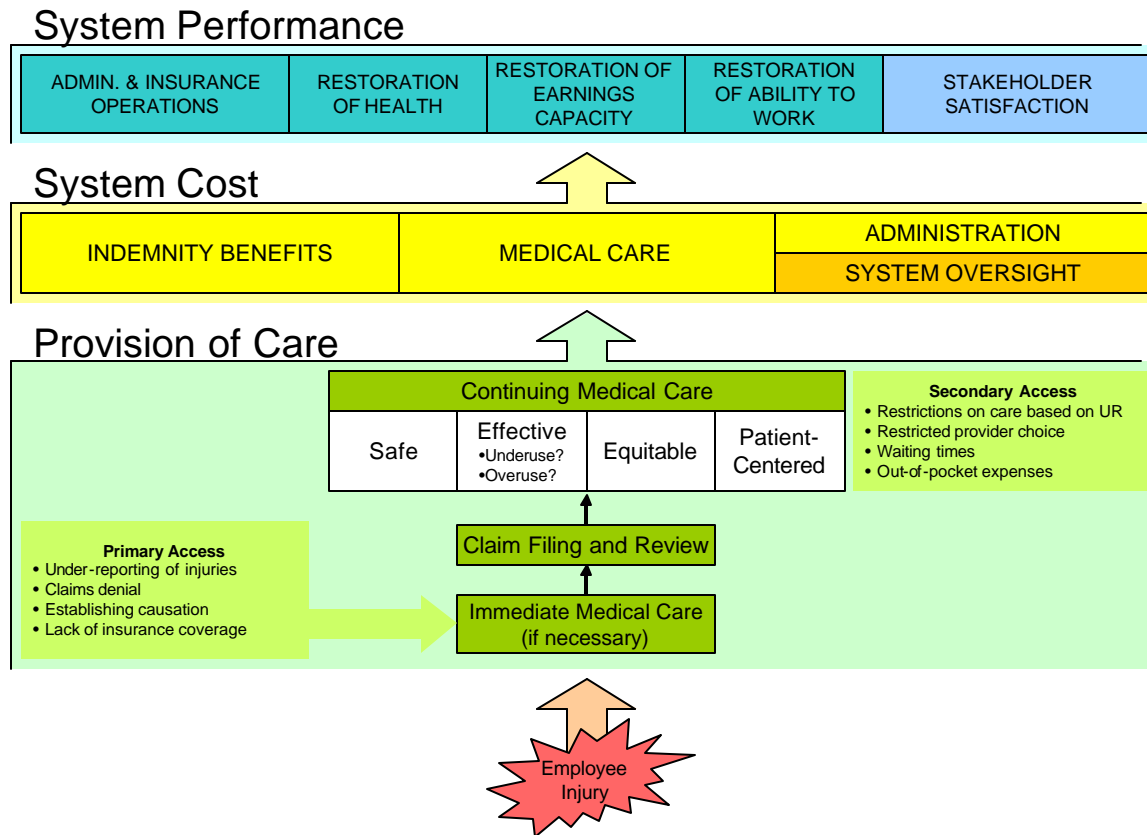
Soeren Mattke stated that the goal of the presentation was to discuss monitoring costs in the workers' compensation system as part of a proposal to build a comprehensive monitoring system for workers' compensation. California has had a long tradition of innovative research in workers' compensation policy, but had plunged into deep financial crisis. The crisis has been averted and stabilized with the recent reforms, but to avoid a future crisis, a more proactive approach to monitoring workers' compensation utilization trends is needed. He stated that research is very good at explaining what happened two years after the fact, but it is not as good at giving advance warning signals. Monitoring is also needed to look out for unintended consequences of the recent reforms, such as the effects on quality and access to care.

Mr. Mattke stated that monitoring is not new to California and the workers' compensation system. There are the Workers' Compensation Insurance Rating Bureau (WCIRB) Annual Cost Monitoring Report, California Workers' Compensation Institute (CWCI) reports on cost and utilization trends, and the Commission on Health and Safety and Workers' Compensation (CHSWC) Report Card. However, all these efforts have relevant limits because they rely on aggregate data and they lack the detail to understand what is happening on a real-time basis. He also stated that some of the reports have incomplete coverage, because they rely on insurer data.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

The phase-in of the Workers' Compensation Information System (WCIS) in the Division of Workers' Compensation (DWC) presents a unique opportunity because it would have transactional-level data available from a public agency. However, collecting data and analyzing and reporting data are different tasks, and it is not yet directly possible to build a report card from the data available.

Mr. Mattke stated that in a recent study, RAND argued for the implementation of a comprehensive performance monitoring system for workers' compensation that would provide policymakers with real-time intelligence and actionable information to make policies and changes in the rules and regulations to stabilize the system and to avoid future problems. Mattke stated that a blueprint for this system has been developed and that this presentation provides an overview of the key design considerations in the implementation of such a system.



Mr. Mattke then briefly described the framework. The provision of care is the first level of delivery. This level starts with the employee injury, where the employee enters the system and then moves to immediate medical care and the request for primary access. It then flows to considerations of continuing medical care (safe, effective, equitable and patient-centered considerations), leading to secondary access care issues. The next level is costs or the resources used to deliver such care, which are divided into three large categories. The upper level is the level of system performance, i.e., the value for money that the system produces. The middle

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

three components are key outcomes parameters (restored health, earnings capacity, and ability to work), and the outer two components are administrative efficiency and stakeholder satisfaction.

Mr. Mattke stated that to examine how to monitor costs, key conceptual issues or questions need to be addressed, such as what are the relevant components of cost (since there may be differing views on such costs), how can cost in the different categories be measured, and which measures/indicators should be used? There is also the question of implementation issues, such as available data sources, additional data collection requirements, and information technology (IT) infrastructure and governance.

Mr. Mattke divided the relevant cost components into direct and indirect costs. For direct costs, he stated that there were medical costs, including professional charges, facility charges and pharmaceutical and durable medical equipment (DME) charges, and there were indemnity benefits and administration/oversight costs. The less tangible indirect costs to businesses are lost earnings and lost productivity. He stated that based on preliminary research from group health plans, lost productivity should not be underestimated. Along with lost earnings, these indirect costs may exceed direct costs. He also commented that more and more businesses are changing their practices and view insurance less as an expense to be contained and more as an investment in their workers. This presents a win/win situation of better medical care and improved productivity.

Mr. Mattke stated that measuring direct costs is relatively easy. The cost of medical care and indemnity benefits can be derived directly from claims, as an episode of care is well defined for workers' compensation. Administrative costs are also largely known, as long as accounting conventions are used to allocate them to individual claims.

Mr. Mattke then stated that measuring indirect costs is more difficult. He stated that lost earnings capacity can be estimated from the difference between pre-injury and post-injury wages. Lost productivity is trickier, and the measurement for that is not in place. He stated that lost productivity has two components: absenteeism and presenteeism. Absenteeism, or absence from work, can be measured through time records or worker surveys. Presenteeism, or reduced performance while at work, can realistically only be measured through surveys. One approach in the surveys is perceived impairment; another approach is estimated reduced productivity in percentage terms; and yet another is lost time in hours.

Mr. Mattke stated that estimating the cost of lost productivity could be performed with various salary-conversion methods, which multiply the lost time/lost performance with a measure of salary. The simplest version is the Human Capital Approach, which is a straight multiplication calculation. The Multiplier Approach, developed at Columbia University, has multipliers for different types of job categories that are weighted up or down to reflect how much an individual affects a firm's bottom line. There is also a Friction Cost Approach, which uses the replacement cost of a worker. He stated that introspective methods use thought experiments to estimate the magnitude of the cost; such surveys ask how many full-time equivalent (FTE) positions could be saved if operating at full productivity, etc. Firm-level methods use the cost of

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

countermeasures used to deal with absences due to injury or illnesses, such as fees paid to temporary agencies and costs of redundant staff.

In terms of which metrics should be used for direct cost, Mr. Mattke stated that cost measures for different categories should be combined with utilization measures, for example, for the average episode, for episodes of common and costly injuries, such as chronic back injury or carpal tunnel syndromes, and for common and costly procedures and services, such as physical therapy or back surgery. Administrative costs also need to be attributed.

Mr. Mattke stated that the metrics for indirect cost are more difficult because no single instrument and method can be regarded as a universally accepted standard. There are a wide variety of options, and there is a trade-off between necessary detail and burden of data collection.

Mr. Mattke stated that the key implementation issues include data sources. WCIS will allow access to all payer transaction-level data, but it is still an evolving system. The California CWCI and Workers' Compensation Research Institute (WCRI) data systems are more mature, but have gaps and access restrictions. He stated that indirect cost data would have to be collected but could be combined with other surveys or employer efforts.

Mr. Mattke indicated that IT infrastructure was an issue for another day. He stated that it is difficult to go from a database to a report card, and that something process would have to be built in order to produce such a report. Governance is a related issue, including concerns about ownership of data and content of the report, oversight of production process, maintenance and quality-assurance procedures.

Mr. Mattke stated that this discussion provides a rough sketch of the need for and the design of a performance-reporting system, and that a forthcoming RAND paper will document those considerations in more detail. The actual development and implementation of a performance-reporting system would be a substantial effort, both conceptually and from an IT perspective. He stated that RAND believes it would be worth the effort, as such a system would allow for proactive and evidence-based policies and business decision-making. It could also become a model for other states, allowing for benchmarking. Mr. Mattke also stated that availability of objective data could reduce contentiousness and lead to more objective discussions overall.

### *Questions*

Commissioner Wilson asked whether indirect costs include the various wage supplements that employers have, identifying for example in schools, the difference between what a substitute teacher is paid versus a regular teacher's salary. He stated that corporations usually have a supplemental plan to make up any differences and that public safety employees also get the full salary through various negotiated arrangements. He stated that all combined, these factors represent a huge cost and asked whether those costs are picked up. Mr. Mattke replied that he has proposed a framework with which to think about the issues, but that nothing has been designed yet. He acknowledged that it is complex to include all of the cost items and that it

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

requires the input from various stakeholders to understand where the money goes and what items need to be considered and included. Looking only at the cost of medical care usually underestimates the total costs, because total costs would not be picked up by workers' compensation premiums. He stated that the issue of costs certainly goes beyond medical costs.

Commissioner Salazar asked about the level of confidence assigned to surveys that determine such indirect cost measurements. Mr. Mattke replied that this is an evolving science, and it is complex to measure productivity. The data-collection instruments, to the degree possible, have to be validated, and they have to be validated against an objective standard. Lost time can be validated against an objective standard of employer reports most of the time. However, productivity outside of settings where the ability of what employees do is difficult to measure. One method has been a validation correlation between what workers report and what supervisors report. Another method has reported productivity correlated to medical claims. Mr. Mattke stated that researchers try to corroborate survey information with objective data, but this process is difficult and inconclusive and should be viewed with skepticism.

Chair Wei asked how such a monitoring system would allow for proactive and evidence-based policies and business decisions and also asked for some specific examples. Mr. Mattke replied that one big issue in California is that costs for services of medical care are not that high, because of regulated fees. However, the volume of services is extremely high. If costs and utilization trends are looked at separately, utilization changes can be identified relatively quickly, as can physical therapy charges for certain conditions. If the volume of such therapies were to increase rapidly, they could be detected and then the number of visits per injury could be limited, as the State has done in the past. If factors driving the cost changes can be identified, relatively specific policies rather than overall limits can be instituted.

Chair Wei stated that it was her understanding that it would be possible to get in more real time, regional or transactional or specialty or silo data, and Mr. Mattke confirmed her understanding. He stated that for example, one could see pharmaceutical trends such as a big shift from relatively cheap over-the-counter (OTC) painkillers to more expensive drugs or morphine-type drugs. Pre-authorization requirements could then be instituted such as requiring patients to first try OTC drugs before using the more expensive ones.

Chair Wei asked how "real" "real-time" is. Mr. Mattke replied that the answer depended on the WCIS data, if they were to become the backbone of such a system. The more quickly the data are collected and prepared, the quicker such statistics can be provided. He stated that that also raises a related question about episodes, which can be very long. Most of the costs happen in the first three months, so statistics could be calculated for the first month or first few months of a claim, which would give relatively quick access, rather than wait until a claim is closed, which could last a year. He stated that these are pragmatic design issues that are very important.

Chair Wei stated that her concern was that while this may be a sophisticated way to measure costs, it does not seem tied to quality at some level. For example, there may be a region that has higher costs in a certain specialty, but that could be because the quality of care is very good and payers are willing to pay a little more to get that quality. Mr. Mattke replied that in the end, the

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

system should not monitor only costs but should also monitor quality of care. He stated that if there is a justifiable reason for spending extra to get people back to work more quickly and returned to health, then that should be done. He stated that the system also should not take a narrow payer perspective that says that spending money is always bad; it should look at whether monies are spent effectively and efficiently. The system should describe not only what resources are used but also what is produced by using adequate medical standards.

Commissioner Steinberg stated that it was not clear what this proposal added to the monitoring systems that were already in place, such as the cost monitoring conducted by the WCIRB, CHSWC, and the CWCI. Mr. Mattke replied that the main difference is that the current systems are run by the insurance industry and that they do not include self-insured employers in the data. In addition, the current system monitors cost and utilization, but does not monitor quality of care. In contrast, the proposed system is more comprehensive in terms of the components of the system as well as the coverage of the representatives.

Ms. Baker stated that Mr. Mattke is proposing a framework for evaluating the system; the system is theoretically already there in WCIS. She stated that the proposed framework is designed to help understand what types of questions might be asked of the system. For example, from a labor/worker perspective, specific outcomes, such as medical treatment improving return to work, could be queried.

Commissioner Wilson asked for a status update on the project, particularly whether this was a CHSWC project and what the timeline is. Ms. Baker replied that this is not exclusively a CHSWC project but that it has emerged from all of the Commission's projects and that it is a way to look at the workers' compensation system as a whole. Commissioner Wilson then asked what the next step would be. Ms. Baker stated that the next step would be to look at WCIS and to see how it could produce information that could be valuable to the State of California and the stakeholders.

Chair Wei stated that it would be helpful at the next meeting to have the DWC provide an update on WCIS.

*Public Comments and Questions*

Katherine Porter, Attorney for WorkSafe, asked if the system that is monitoring costs would be able to factor in an employer's failure to pay for medical care or failure to respond to a claim. She also asked if the costs arising from those failures would be included, such as who bears the costs for a worker going to a general hospital for care or for receiving public benefits or other assistance. She asked if such a monitoring system would capture such costs, which she felt are at the center of improving the workers' compensation system.

Ms. Baker replied that delays would be tracked in the system, and increased costs or failure to pay could be measured. Questions such as whether there are longer temporary disability (TD) periods if there is delay or failure to pay are also the types of questions that can be answered.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Ms. Porter asked if the costs would be looked at regardless of who bore those costs, such as a county or a family. Ms. Baker replied that the data would be there to make such interpretations. Mr. Mattke stated that he wanted to clarify that much of the design would have to be created in order to address the range of questions raised in public comment.

Christine Schultz, California Chiropractic Association, asked whether pharmaceutical costs would be separated out, especially based on past CHSWC studies on pharmaceutical practices. Mr. Mattke replied that pharmaceutical costs would definitely be separated out. He stated again that only a proposal for a framework has been presented and that how the categories would be precisely measured would have to be decided and designed. He further stated that those measures would have to have stakeholder input and that during the operational phase, it would be important that those measures would be updated to respond to changes or new developments.

**Presentation on Recent Evaluation of Savings from the Reforms and Trends**  
**David Bellusci, Chief Actuary, Workers' Compensation Insurance Rating Bureau**

Mr. Bellusci stated that the role of the WCIRB is to look at the reforms from an insurance-cost perspective, in its pure premium ratemaking role as the designated statistical agent of the Insurance Commissioner. The WCIRB looks at the reforms from two perspectives: one, when the reforms were initially passed, what was the prospective estimate; and two, from the perspective of post-reform data. Mr. Bellusci then presented a summary of some of the high-level results from the WCIRB's Prospective Estimates:

*Assembly Bill (AB) 227 & Senate Bill (SB) 228*

Enacted in September 2003 with Fee Schedule Changes, Medical Utilization Reforms and the Repeal of Vocational Rehabilitation. WCIRB Estimated a Savings Effect: -13% to -16% (-\$4 billion to -\$5 billion/year).

*SB 899*

Enacted in April 2004 with a 2-year Cap on Temporary Disability Benefits, a New Permanent Disability Schedule, Other Changes to Permanent Disability and the Creation of Medical Provider Networks. WCIRB Estimated a Savings Effect: -28% (-\$6 billion/year)

*WCIRB Cost Evaluation Process*

Mr. Bellusci stated that when there is reform legislation, WCIRB uses research from CHSWC, internal sources and experts to estimate the impacts. He stated that the pure premium rate impact is created using contemporaneous evaluations that reflect key assumptions. Then actual savings that materialized are reviewed and a retrospective cost assessment is made by working groups, including representatives from CHSWC, DWC, other researchers, insurer representatives and others. The multi-disciplinary working groups consider what information is needed to measure the changes, when will the information be available, etc. The results of that

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

process were submitted to the Insurance Commissioner as a monitoring plan in September 2005. In September 2006, an updated cost evaluation was published and is available on the WCIRB website. Mr. Bellusci stated that he would presented a summary of some of the high-level results.

*SB 228 Fee Schedule Changes: Initial Estimate vs. Preliminary Post-Reform Results*

Physician schedule cost-per-service decreased 5% (as expected), the outpatient fee schedule decreased 38% (almost as much as expected); but pharmacy savings did not materialize as expected and were only down 13% compared to 37%, due primarily to physician dispensing. (All of these estimates are cost-per-service, so any increase in use is controlled for.)

*Medical Utilization Reforms: Initial Estimate vs. Preliminary Post-Reform Results*

Physical therapy visits decreased 61%, more than expected; chiropractic visits decreased 77%, more than expected; and other medical visits decreased 5%, as expected.

*SB 228/SB 899 Indemnity Reforms: Initial Estimate vs. Preliminary. Post-Reform Results*

Vocational Rehabilitation decreased 75%, less than expected; and temporary disability duration decreased 10%, more than expected.

*SB 899 Permanent Disability Changes: Initial Estimate vs. Prelim. Post-Reform Results*

The January 1, 2005 Permanent Disability Rating Schedule ratings decreased 55%, more than expected; the change in the number of weeks decreased 16%, more than expected; and apportionment decreased 5%, less than expected.

*Loss Adjustment Expenses: Initial Estimate vs. Preliminary Post-Reform Results*

The one area where savings have not materialized is the area of loss adjustment expenses which is what insurers pay to defend and administer claims (allocated) and overall overhead claim expenditures that cannot be allocated to an individual claim, such as claims adjusters' salaries (unallocated). The assumption was that the expenses would decline with the losses, but they stayed the same with a decreasing volume of claims. There may be more litigation and more transactional-related costs.

*Indemnity Claim Frequency Change: Initial Estimate vs. Preliminary Post-Reform Results*

Mr. Bellusci stated that the biggest change has been the decline in claim frequency. Indemnity claims were expected to decline moderately; however, over the past several years, frequency has decreased 17% annually since 2004. He stated that this figure is driving rate decreases.

Mr. Bellusci stated that this figure for claim frequency requires more discussion. He stated that the principal causes of recent rate decreases need to take into consideration that little in the reforms were directed at frequency. However, a general decline has been observed throughout the county with a greater decline in California than in other states; safer work places, shifts from heavy manufacturing to service industries, and mechanization in heavy industry are long-term



**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

factors that drive such a trend. He also stated that the impact on severities is uncertain, that it depends on whether they are large or small claims or a mix. WCIRB 2005 and 2006 studies have examined this phenomenon in California. He stated that the WCIRB has found that it is a fairly broad-based frequency decline, across all industries, virtually all types of claims, and for both deductible and non-deductible policies. He stated that the decline is not explained by economic or demographic variables, or any one-time shocks to the system. Finally, the WCIRB believes that this decline is an indirect impact of reforms.

Mr. Bellusci stated that the bigger picture could describe the average cost of claim. The estimated ultimate total loss per indemnity claim is \$38,211 per claim in 2005, which is surprisingly up from \$36,426 per claim in 2004 before all of the reforms went into effect. He stated that the loss of some of the smaller claims is driving up the average cost.

Mr. Bellusci then stated that the average insurer rate per \$100 of payroll was \$3.21 in the third quarter of 2006, down from a \$6.47 high in the third and fourth quarters of 2003, a rapid decrease almost as quick as the previous increase.

*Questions*

Commissioner Wilson asked about the dollar equivalents to the percentages cited in the presentation. Mr. Bellusci replied that dollars are more complicated. He stated that the Executive Summary of the WCIRB Report, available on the WCIRB website, has a table that facilitates that comparison. He agreed that the percentages among the individual savings do not give a relative magnitude of savings.

Chair Wei asked about the "big picture." She asked how much of the percentage drops and dollar savings have been passed on to employers in terms of percent per 100 dollars of payroll. Mr. Bellusci replied that if the pure premium rate is used as the proxy, there is a little over a 60% reduction in pure premium rates, including January. He stated that average insurer rates are down by more than 50%, but they do not reflect January; they should be about 55%. The lag between what the Insurance Commissioner posts and what the insurers pass through is much shorter. He stated that a further decrease of about 7% to 8% in insurer rates is expected on January 1st. Chair Wei asked if that captured all the total dollars. Mr. Bellusci stated that it captures the Insurance Commissioner's estimate for what the loss cost should be for 2007, reflecting dollars in medical benefits, indemnity benefits and loss adjustment expenses. He stated that he believed that it reflected total costs. Chair Wei asked if for the Permanent Disability Rating Schedule, the numbers reflect a 55% decrease. Mr. Bellusci stated that WCIRB numbers still reflected a 38% decrease and that that was the one deviation between what WCIRB filed in January 2007 and what the Insurance Commissioner approved. He stated that to temper the 55% a bit, 50% was what was finally reflected in the pure premium rates.

Chair Wei asked whether the two pieces of the loss adjustment expenses represented profit. Mr. Bellusci replied that they did not. He stated that profits are not calculated in any of WCIRB

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

figures. They are either losses or loss adjustment expenses which are direct costs related to claims.

Chair Wei then asked how claims could be dropping without any administrative cost savings. Mr. Bellusci replied that that is a little bit surprising, but that there are clearly some transitional issues as the system goes through reforms, including training issues and a lot of litigation on issues that have not been resolved, such as apportionment and permanent disability ratings. He stated that when the system becomes a little clearer, the question will be whether those costs will begin to drop or whether they are fundamental, perhaps due to the remaining claims being more complicated and involving more litigation. He stated that these answers are not yet known.

Chair Wei asked whether the WCIRB had seen any differences between 2003, 2004, and 2005. Mr. Bellusci stated that the dollars of loss adjustment expenses have been fairly flat for those three years. He also stated that it is surprising because the dollars have dropped precipitously and the number of claims has dropped precipitously. He stated that on a per claim basis, there is definitely more loss adjustment expenses per claim than before. He stated that the WCIRB does want to look at that more closely over the next year.

Chair Wei asked whether the claims frequency change over the three years included the "zeros" that fell out of the Permanent Disability Rating Schedule. Mr. Bellusci replied that those claims would fall out if they had temporary-only disability, but if it were medical-only claims, they would show up as part of the decline.

Chair Wei stated that she had a very difficult time understanding how claims frequency has dropped so dramatically. She said that she is hard-pressed to believe that the California worksites have gotten that much safer. She then asked what is really going on, whether the workers' compensation system has become so decimated that injured workers do not feel that it is worth the hassle to file a claim. She asked whether it was easier for injured workers now to go into group health if it is a medical-only claim, thereby seeking relief from their HMOs. She also asked if the WCIRB had looked at that. Mr. Bellusci responded that those were all good questions, but there were no answers yet.

Chair Wei also stated that she was concerned about the decrease in claims in California compared to other states. Mr. Bellusci agreed that it was a concern, but he added that claims in California had been exceptionally high both in terms of cost and frequency of claims and that he believes that the reductions that are now occurring perhaps represent a return closer to the norm and more in line with other states. Chair Wei stated that it would be helpful if Professor Boden could help the CHSWC understand the frequency decline when it was his turn to present his study to the Commission.

Commissioner Steinberg asked how much of the savings have gone to employers. Mr. Bellusci replied that rates are down, with more than a 50% drop in rates from the pre-reform rates over a three-year period; compared to the Insurance Commissioner's estimate that 60% of employers would see a reduction, 50-55% are seeing lower rates. Commissioner Steinberg stated that his

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

company's personal, anecdotal experience from 2000-2003 was a tripling of the annual premium, but since reform, they have seen only a 10-15% reduction in actual cost of premiums. He asked whether there was a way to measure what the cost savings are.

Mr. Bellusci replied that from an insurer's perspective, the WCIRB is measuring the average rate. However, he acknowledged that the reductions were slow in coming. Referring to a chart, he stated that rates did not drop very quickly in 2004; the big drop-offs have happened over the last year or so. He said that by the third quarter, rates are one half of what they were. He stated that individual cases would vary due to several reasons, including type of job and experience rating.

Commissioner Wilson stated that in the 2006 CHSWC Annual Report, the frequency of claims in the public sector did not experience the same decrease and that in some cases the frequency was up. He asked why that might be occurring. Mr. Bellusci replied that that was interesting but that he did not have an explanation for that.

Commissioner Wei asked whether Mr. Bellusci could separate out the savings (50% decrease in pure premium rate) due to the decline in frequency of claims and the savings due to the reforms. Mr. Bellusci replied that it is difficult to say, as they are not independent of each other. He stated that he believes that the early reductions (savings) were driven by the reforms and that the rest were due to the frequency declines. He stated that maybe a little over 50% are due to the reforms, and the rest are due to frequency declines, but he also stated that that it is very difficult to disentangle those two causes because they are related. He then stated that in the areas that the WCIRB looked at, the reforms are reducing the costs as they were intended to do. He also stated that rates have come down farther because of the savings on severity. The more recent rate declines are the frequency, and the earlier declines were probably due to the reforms.

Chair Wei noted that the more recent declines are coming much more quickly and are bigger. Mr. Bellusci stated that that was true; in terms of market rates, the declines have been bigger in the last few years.

Judge Lachlan Taylor, CHSWC, asked whether the permanent disability award declines from a graph in the presentation were only those cases that remained compensable for permanent disability. Mr. Bellusci replied that they were based on the University of California study that Frank Neuhauser did, addressing only claims that had a rating in the other system.

Chair Wei asked if anybody reflected a decline in rates based on the cases that have fallen out. Mr. Bellusci stated that what determines WCIRB rates and the rates in the market are experience. He stated that WCIRB is basing their rates on 2004 and 2005 experience. Whether or not there are fewer claims, the experience is built into the rates. It is not like an initial prospective guess. He stated that those guesses from a rating perspective almost become irrelevant because there is now data for 2004, 2005 and 2006. He said that the WCIRB is looking at what the data tell them about frequency and severity and losses and then making projections. He stated that while there is no direct estimate of the decline based on cases that fell out, to the extent that that has reduced claim frequency or reduced severity that is built into the rate projection.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Chair Wei thanked Mr. Bellusci for his time and concluded the question period.

**Presentation on the Capture-Recapture Estimates of Workplace Injury Underreporting in Six States: "How Often do Workplace Injuries go Uncompensated?"**  
**Les Boden, Ph.D., Boston University School of Public Health**

Professor Boden stated that he would focus on determining the percentage of injuries that occur that actually get into the workers' compensation system and allow those injured to get the benefits of the system. He stated that it was very difficult to figure out the cost of injuries that do not get into the workers' compensation system. He stated that the work done so far has been on six states, but not yet on California. The California data are from 2003 and are now available; they will be analyzed and reported on in about six months. That will help determine whether the declines in claims that are being seen are real declines or declines due to non-reporting.

Professor Boden stated that the study is comparing individual workplace injury reports to workers' compensation agencies to reports of workplace injuries that come to the United States Bureau of Labor Statistics (BLS) to determine the amount of underreporting. At each step in the study, conservative assumptions will be made to get a conservative lower-bound measure of underreporting.

Professor Boden stated that workers' compensation is the main source of replacement for lost earnings for injured workers. It also may provide safety incentives to employers because of the costs involved. If the reported number of claims and the reported cost of work-related injuries decline, public prevention efforts may appear less important. Professor Boden stated that the study database is the BLS survey of injuries and illnesses based on over 150,000 employers providing information on injuries based on the mandated OSHA 300 injury reports. These data provide national estimates of non-fatal injury incidence.

Professor Boden stated that a lot of factors affect the volume of workers' compensation claims. Factors that discourage workers to file workers' compensation claims include: that workers need to know they are entitled to workers' compensation benefits; that some workers will not file workers' compensation claims because of perceived stigma of fraud and malingering; that if the expectation is that claims may not be accepted, expected benefit levels are low and medical care coverage is problematic, then workers are less likely to file workers' compensation claims; that workers often have concerns about employer retaliation if they file a workers' compensation claim, as well as have concerns about job security, particularly illegal immigrants who fear deportation; that workers believe that there is a lot of hassle involved with the workers' compensation system and that filing claims is demeaning and that it is difficult to get benefits; that if physicians find it difficult to be paid by the workers' compensation system, they then hassle injured workers; and finally, that employer attitudes and policies that are meant to improve safety by evaluating line managers on their workers' compensation claim rates may cause line managers not to file claims.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Professor Boden stated that data from six states, Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin, are available for the study. These data are from reports from the state workers' compensation databases, using first and subsequent reports to get information on the injuries, and from the BLS survey. The two sources are put together, matching individual injury records from the two sources, looking at samples where employers were sampled by the BLS, and then looking at cases to get comparable samples where the duration of time loss is above the waiting period, i.e., indemnity cases.

Professor Boden stated that the capture-recapture analysis used uses information on individual reporting to multiple sources. The next step is to link individual reports and then to find cases reported to both sources and then to find cases reported to one but not the other, either workers' compensation or the BLS. By using capture-recapture analysis, an estimate of the number of cases not reported to either system can be made.

Professor Boden stated that this method of analysis assumes independence of reporting and that that assumption almost certainly does not hold in workers' compensation. If there were two identical injuries, the employer recorded one on the OSHA 300 Log and did not record the other injury. It is not likely that both would be reported into the workers' compensation system. The one reported to the BLS is more likely to be reported. The expectation is that BLS and workers' compensation are not independent of each other. Reporting is likely to be positively correlated (source dependence) in cases where the doctor does not diagnose the case as work-related, the worker does not report injury, or the worker reports but the employer does not think it is work-related.

Professor Boden stated that assuming independence, the conclusions of the study analysis of the six states show that for lost time non-fatal injuries, Washington and West Virginia appear to have only under 10% of underreporting to the workers' compensation system; New Mexico and Minnesota had reporting that was less than 70%; and Oregon and Wisconsin had between 70% and 80%. Therefore, under the most conservative assumptions, in 4 of 6 states, less than 80% of injured workers receive workers' compensation, and less than 65% of injuries are reported to BLS; and that in 4 of 6 states, less than 60% of injured workers receive workers' compensation and less than 50% of injuries are reported to BLS. Professor Boden restated that employer safety incentives are lower, the priority on prevention is reduced, and the ability to say how well the workers' compensation system is functioning is reduced.

Professor Boden stated that the next steps would be to develop estimates for California within six months and understand why there is underreporting. He stated that they are interested in both the extent to which state workers' compensation influences the number of cases that get into the system and the extent to which employer policies can influence the number of cases that get into the system.

*Questions*

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Commissioner Wilson stated that in California, which is under Cal/OSHA instead of a federal program, there is a lot of confusion between a first aid case and a medical-only case. He also stated that an extremely high proportion of workers in California work in firms where there are only a few employees and that these employers are not aware of reporting requirements. Professor Boden responded by stating that there are more issues with OSHA 300 reporting, but those issues would not affect the study which is looking at cases with at least more than four days away from work. Very few of the employers in the samples would be below ten employees.

Chair Wei asked which years of data the study would look at. Professor Boden responded that there are WCIS data for 2003. Data for 2004 would require waiting long enough to have enough reporting come into the WCIS database. He stated that there is a reasonable chance that some time in the next three to four months, 2004 data would be available. Chair Wei stated that she would encourage Professor Boden and Mr. Bellusci to look at as wide a range of data as possible, especially to provide insight into the dramatic decline in claims reported and to determine the extent to which California is an outlier. Professor Boden stated that he will check to see what the WCIS database can provide.

Juliann Sum from the University of California Berkeley asked if the study could include results that assume varying degrees of dependence. Professor Boden stated that there are results for a pretty high level of dependence or correspondence between workers' compensation data and BLS data, which show that Washington state's 94 percent goes down to 85 percent, Oregon's 78 percent goes down to 58 percent, and New Mexico's 67 percent goes down to 46 percent. These are estimates and will help identify if a number is too high or too low.

**Election of CHSWC Chair for 2007 (Employer Representative)**

Chair Wei explained that, pursuant to Labor Code Section 75(b), the Chair of the Commission rotates each year between a labor and employer representative. The Chair in 2007 is to be an employer representative.

*CHSWC Vote*

Commissioner Salazar nominated Commissioner John Wilson to be the 2007 CHSWC Chair, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Chair Wei stated that Commissioner Wilson had provided valuable guidance to her during her first time as Chair and that she looked forward to his being Chair of the Commission in 2007.

**Executive Officer Report**

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

**Christine Baker, CHSWC Executive Officer**

Executive Officer Christine Baker reported on CHSWC activities. She stated that it was a pleasure to serve Chair Wei and that the Commission staff looks forward to serving Chair-elect Wilson.

Ms. Baker stated that CHSWC staff has been active this past month conducting research, preparing reports, and conducting roundtables and briefings. Over the past two weeks, a 24-Hour Care Roundtable was held with over 30 participants, and a Pay-for-Performance Roundtable was held. In addition, there was a Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board meeting, and in mid-December, there will be a Young Worker Advisory Meeting. Ms. Baker stated that CHSWC staff also has been working on a paper on the uninsured employer that should be ready at the next Commission meeting.

***Return-to-Work Roundtable***

Ms Baker stated that a Return-to-Work Roundtable was held with over 25 participants. The roundtable discussion has been written up in a report that can now be made available to the public for comment and feedback. The report summarizes the discussion at that meeting.

Commissioner Steinberg asked if the letter with feedback from Mark Gerlach will be included in the report. Ms. Baker responded that any letters received would be included as an attachment. Chair Wei stated that Mr. Gerlach's letter raised very interesting points. She stated that as with the Permanent Disability Report, where all correspondence received was attached to the report, all correspondence about the CHSWC Report on the Return-to-Work Roundtable will be attached to the report.

***CHSWC Vote***

Commissioner Thacker moved to approve the Report on the Return-to-Work Roundtable for distribution and feedback and Commissioner Steinberg seconded. The motion passed unanimously.

***24-Hour Care Roundtable***

Ms. Baker stated that CHSWC staff will prepare a report on the 24-Hour Care Roundtable, during which a lot of important issues were raised, and will present the report at the next CHSWC meeting.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

***Pay-for-Performance in California's Workers' Compensation Medical Treatment System: An Exploratory Discussion***

***Barbara Wynn, Senior Scientist, RAND***

Ms. Baker introduced Barbara Wynn from RAND to speak about the Pay-for-Performance Roundtable. Ms. Wynn stated RAND has been asked to evaluate the recent reforms and that one of the tasks of the evaluation is to prepare a white paper on the potential of using financial incentives to improve medical care. The white paper will incorporate interviews with stakeholders, the literature on use of pay-for-performance initiatives in group health, and the input from selected payers and providers at the Pay-for-Performance Roundtable.

Ms. Wynn explained that pay-for-performance is a mechanism to promote value-based care by aligning financial incentives with the delivery of high-quality care or efficiency of care. The mechanism is to reward health care providers based on their performance on a set of specified measures which can be related to quality, efficiency or cost, efficiency of administrative processes, or adoption of information technology.

Ms. Wynn stated that pay-for-performance is important to workers' compensation because there is an established need to improve the care provided to workers and the outcomes of that care. She stated that the current payment system does not reward quality or efficiency because the Official Medical Fee Schedule (OMFS) does not pay for disability-management activities, disability prevention and counseling, and other activities to promote return to work, and because fee-for-service encourages unnecessary services. Ms. Wynn stated that medical provider networks (MPNs) provide an opportunity to select high-quality care providers but that employers forming networks do not have information or data needed to select high-quality providers. She then stated the current utilization review (UR) system has high administrative burden for payers and providers and that a proactive system based on performance measure report cards might be less costly than an administrative system. This would be achieved because providers who have proven to provide high-quality would be relieved of administrative burdens.

Ms. Wynn stated that potential barriers to instituting a pay-for-performance system include: the complexity of the current system, especially since the implementation of the recent legislative provisions; the level of distrust, which is currently as great as it was in the pre-reform period, among parties in the system in the areas of fee schedule discounting, UR processes, and the administrative burden; a lack of an ongoing real-time monitoring and evaluation system so there is no comprehensive data set or infrastructure to support an initiative at this time; the multiple payers, which means that there has to be a mechanism for pooling data across payers in order to have enough observations for reliable measurement for many of the outcome measures; that most physicians treat only a few injured workers each year; and that physicians who concentrate in occupational medicine have little or no exposure to non-occupational health quality initiatives that are linked to pay-for-performance.

Ms. Wynn then stated that to establish a model pay-for-performance program, it would be necessary to take the following steps: establish safeguards and processes that build trust among all stakeholders through their participation; and choose performance measures that generate



**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

overall savings through improved quality and better work-related outcomes. She stated that it would also be important to pilot test any measures to determine if the goals are realistic and what the administrative burden of reporting would be, and, finally, to build on existing data infrastructure and reporting systems to try to minimize the administrative burden of any pay-for-performance process, including potentially paying for additional items that are not captured in the system.

Ms. Wynn stated that the conceptual framework for a pay-for-performance system would include establishing the goals and objectives and then developing the performance measures, while being very careful about unintended consequences, and the reward structure. Those principles will govern how the data are collected and evaluated and how payment is made.

Ms. Wynn stated that participants at the Pay-for-Performance Roundtable identified the most important goal as work-related outcomes, such as days lost from work and return to work. Ms. Wynn then stated that the potential measures of a pay-for-performance program would include: clinical process and outcome measures, not readily available for work-related conditions; efficiency measures or cost measures; patient experience or patient satisfaction; administrative measures such as filing deadlines; and structural measures, such as use of electronic billing.

Next, Ms. Wynn stated that the reward structure involves a number of decisions which include: that there could be a modified fee schedule payment paying for specific services or a bonus payment after evaluation and measurement of whether objectives were achieved; and that the criteria for receiving reward, whether rewarding excellence or improvement. Ms. Wynn then stated that another key decision is the financing mechanism, which could be either insurance premiums or a bonus pool created through withholds of physician payments, a less popular option, or a shared savings formula, as used by several group health programs, but often difficult to measure. Ms. Wynn stated that the next steps would be to synthesize comments from stakeholder interviews and the comments from the roundtable and then present the draft white paper to CHSWC.

Commissioner Wilson stated that a lot of self-insured employers are doing pay-for-performance programs on a voluntary basis already and that it might be good to find out how they do this and what kind of savings they achieve. These programs have identified high-quality providers and have achieved quicker return-to-work results.

### ***CHSWC "Report Card"***

Ms. Baker stated that another CHSWC staff activity, the "Selected Indicators in Workers' Compensation: A Report Card for Californians," was completed. This report is based on data from the CHSWC Annual Report. The statistics in the Indicators Report can be extracted and put on CHSWC's website.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

*CHSWC Vote*

Commissioners Salazar and Thacker moved to approve the release of the updated "Selected Indicators in Workers' Compensation: A Report Card for Californians," and Commissioner Wilson seconded. The motion passed unanimously.

***Worker' Occupational Safety and Health Training and Education Program (WOSHTEP)***

Ms. Baker then stated that the WOSHTEP Advisory Board is submitting its third Annual Report in compliance with its mandate in Labor Code Section 6354.7 to prepare an annual written report evaluating the use and impact of the programs developed for WOSHTEP. Program accomplishments include expanding all aspects of WOSHTEP, and key accomplishments included development of a trainers' network to deliver the WOSH Specialist course statewide and a listserv for WOSH Specialists. CHSWC continues to have contracts to provide this program which is beginning to move into the Central Valley, an area where there is a great need for training.

Ms. Baker then stated that the WOSHTEP program has been expanded through partnerships with the State Compensation Insurance Fund (SCIF) and the California Restaurant Association (CRA) to deliver the restaurant safety training program statewide, presenting over 18 workshops for more than 193 owners and managers from over 134 restaurants or food-service programs. State Fund and other insurers are starting to use these services and training resources.

Chair Wei stated that she is pleased that the CHSWC is meeting its mandatory obligations by completing the report.

*CHSWC Vote*

Commissioner Thacker moved to approve the release of the WOSHTEP Advisory Board Annual Report for 2006, and Commissioner Wilson seconded. The motion passed unanimously.

***Guidebook for Injured Workers***

Ms. Baker stated that Juliann Sum and CHSWC staff have finalized the updated "Guidebook for Injured Workers" to reflect all of the reform changes in Senate Bill (SB) 899, and it is ready for publication. The DWC already has requested over 5000 copies once the guidebook is approved. This guidebook is the key resource in the system for informing injured workers.

*CHSWC Vote*

Commissioner Schwenkmeyer moved to approve the release of the updated "Guidebook for Injured Workers," and Commissioner Thacker seconded. The motion passed unanimously.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

***Spinal Surgery Second-Opinion Process***

Judge Lachlan Taylor stated that at the last CHSWC meeting, staff presented a draft recommendation concerning the Spinal Surgery Second-Opinion Process (SSSOP) and it was approved. No formal comments have been received; informal comments have suggested abolishing the system or refining the language. Judge Taylor stated that he suggests that the recommendation be deferred until two weeks before the next CHSWC meeting to allow more time for staff to receive formal and informal comments.

***CHSWC Vote***

Commissioner Wilson moved to extend the time period for public comment on the Spinal Surgery Second-Opinion Process, and Commissioner Salazar seconded. The motion passed unanimously.

***New Emphasis on Return to Work***

Judge Taylor stated that there is a trend in the content of recent conversations about workers' compensation. The American College of Occupational and Environmental Medicine (ACOEM) has released a document "Preventing Needless Work Disability by Helping People Stay Employed". Other comments from the roundtables held by the Commission have focused on: the importance of timely medical care to facilitate return to work; disability durations and the physician's role in helping return people to work as an indicator of system performance; and the value of return to work as a way to reduce costs for employers. Judge Taylor stated that it appears that this is a tipping point where getting workers back to work is a priority for all stakeholders in the workers' compensation system. He stated that CHSWC would continue to provide more information about this priority.

***Public Comment – DWC Audit Process***

Mark Gerlach, consultant to the California Applicants Attorneys Association (CAAA), stated that CHSWC should be aware of the 2005 Audit Report released by the DWC. He stated that the audit process was changed significantly in 2003 to adopt what he would call the mini-audit process and that the changes were largely based on recommendations of CHSWC. He stated that it is now time for CHSWC to evaluate the changes. One of the advantages of the new audit process was that it was going to allow more audits to be done. It was felt that the DWC could no longer do full audits given limited resources, but by doing mini-audits, more audits could be done.

Commissioner Wilson asked Mr. Gerlach to clarify which audits were being discussed. Mr. Gerlach stated he was focusing on claim audits, the PAR and full audits being done under Labor Code Section 129.5. He stated that in 2003, DWC conducted 70 audits; in 2004, 48 audits and in 2005, 46 audits were done. The number of files that were audited has been reduced, but the number of violations has not been reduced. Mr. Gerlach stated that it was also suggested that this process was going to create better results by possibly having larger penalties against employers.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Mr. Gerlach stated that the process boks at five different issues: unpaid compensation; first payment of temporary disability; first payment of permanent disability; subsequent payments of indemnity; and the provision of qualified medical examiner/agreed medical examiner (QME/AME) and vocational rehabilitation notices. Mr. Gerlach stated that the performance in these areas has not improved in the least. There has been a huge amount of unpaid compensation this year, about \$623,000 in 480 claims out of the 3,000 indemnity files that were looked at. If these numbers are extrapolated to the whole workers' compensation system, there could be \$68 million dollars unpaid. Mr. Gerlach stated that this unpaid money is clearly due to injured workers, as the claims are not questionable or under dispute.

Mr. Gerlach then stated that for first payment of temporary disability, the standard to pass the PAR exam in 2003 was that 24.7 percent were late but passed the exam; this year, it was 26 percent. For first payment of permanent disability, in 2003, it was 14.033 percent, and in 2006, it was 15.83 percent. He stated that these are statistics for those firms making late payments but still passing the PAR and that these firms are therefore not getting any penalties and not getting another audit, even though there were late payments. He stated that this should be unacceptable to the Commission, whether an employer or employee representative. He stated that for the insureds, it might be that the insurance companies are causing the late payments and adding to cost. The self-insureds should not be tolerating this with other employers. Mr. Gerlach stated that the problems evidenced in the audits have been continual since they were first started in the early 1990s, and moving to the mini-audit process has not improved the system. He stated that it was important to look into how to build in the proper incentives/disincentives against this type of egregious behavior of claim administrators.

Chair Wei stated that it would be helpful for CHSWC staff to review this issue and report back in the Executive Officer Report in the next meeting. Commissioner Wilson stated that he agreed with Mr. Gerlach and that CHSWC would look into this.

**Adjournment**

The meeting was adjourned at 11:20 a.m. The next CHSWC meeting is scheduled for Friday, February 23, 2007, in Oakland.

Approved:

---

John Wilson, Chair

---

Date

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**December 8, 2006 Elihu M. Harris State Building Oakland, California**

Respectfully submitted:

---

Christine Baker, Executive Officer

---

Date